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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

COMMISSIONERS

KRISTIN K. MAYES, Chairman  
GARY PIERCE  
PAUL NEWMAN  
SANDRA D. KENNEDY  
BOB STUMP

2009 FEB 25 P 2: 55

AZ CORP COMMISSION  
DOCKET CONTROL

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FEB 25 2009

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*[Handwritten signature]*

IN THE MATTER OF THE APPLICATION OF  
JOHNSON UTILITIES, LLC, DBA JOHNSON  
UTILITIES COMPANY FOR AN INCREASE IN  
ITS WATER AND WASTEWATER RATES FOR  
CUSTOMERS WITHIN PINAL COUNTY,  
ARIZONA.

DOCKET NO. WS-02987A-08-0180

**SWING FIRST'S RESPONSE TO UTILITY'S MOTION TO COMPEL**

1 Swing First Golf LLC ("Swing First") hereby responds to the motion to compel filed by  
2 Johnson Utilities, LLC ("Utility"). In general response, please refer to Swing First's February  
3 20, 2009, Notice of Inappropriate Litigation Tactics in the above-captioned docket. Swing First  
4 specifically responds as follows:

5 On June 11, 2008, Swing First filed its Motion to Intervene in this docket, which was  
6 granted by a Procedural Order dated June 23, 2008. Utility did not submit its first set of data  
7 requests to Swing First until January 27, 2009. These data requests largely concern a pleading  
8 that was filed on November 21, 2008, over two months before. Utility does not explain why it  
9 waited so long to submit these data requests, which consist of over 30 questions, including  
10 subparts.

11 Utility then followed up with a massive second set of data requests on Friday, February 6,  
12 2009. The data requests consist of between 200 and 300 questions, depending on how the  
13 subparts are counted.

14 Swing First recognizes that it has an obligation to timely respond to data requests.  
15 However, Utility also has an obligation to timely submit data requests and to allow Swing First  
16 sufficient time to respond, without distractions from other Utility matters. However, just since

1 January 27, 2009, the date of Utility's first data requests, Swing First has been required to  
2 complete the following significant documents:

3	February 3, 2009 –	Direct Testimony of David Ashton;
4	February 6, 2009 –	Fourth Rate Case Data Requests to Utility;
5	February 6, 2009 –	Motion for Date Certain;
6	February 6, 2009 –	E-mail to Mr. Crockett concerning Utility's incomplete
7		data responses;
8	February 6, 2009 –	Second Motion to Compel (Complaint Case)
9	February 9, 2009 –	Letter to Mr. Crockett objecting to proposed deposition
10		dates:
11	February 10, 2009 –	Objections to inappropriate data requests;
12	February 12, 2009 –	Fifth Rate Case Data Requests to Utility;
13	February 17, 2009 –	Emergency Motion to Prohibit Inappropriate Contact;
14	February 17, 2009 –	Motion for Leave to file Supplemental Testimony;
15	February 17, 2009 –	Supplemental Direct Testimony of David Ashton;
16	February 18, 2009 –	E-mail to Mr. Crockett concerning Utility's incomplete
17		data responses;
18	February 20, 2009 –	Notice of Inappropriate Discovery and Litigation Tactics
19		(Complaint Case)
20	February 20, 2009 –	Notice of Inappropriate Discovery and Litigation Tactics
21		(Rate Case)
22	February 20, 2009 –	Reply to Response to Motion to Compel (Complaint Case)
23	February 25, 2009 –	Response to Motion to Strike Ashton Testimony
24	February 25, 2009 –	Response to Motion to Compel

25 This is 17 documents in 22 days! Not all of these documents took hours to prepare, but several  
26 of them required many hours of work.

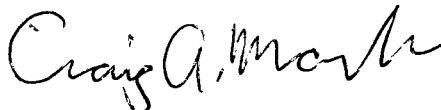
1 As discussed above, Swing First's counsel does have other clients. For one of those  
2 clients, Arizona-American Water Company, counsel spent weeks during the last month  
3 supervising and editing testimony from eleven witnesses. That testimony was just completed  
4 and filed on February 11, 2009, in Docket No. SW-01303A-08-0227.

5 In addition to providing Swing First sufficient time to respond to data requests, Utility  
6 also has an obligation at this stage of the rate case to carefully focus its discovery to just what it  
7 legitimately needs to prepare its rebuttal testimony. Most of the 200-300 data requests in  
8 Utility's second set are really designed to gather information for cross-examination, which will  
9 not occur until Mr. Ashton's date certain of April 27, 2009, over two months from now. Here  
10 are two particularly egregious examples:

- 11 • To prepare its rebuttal testimony, Utility does not need to know about Mr. Ashton's  
12 job duties with Swing First, KDS, Reactivity, Inc. or Cyclone Commerce (DRs 2.3 –  
13 2.6)
- 14 • To prepare its rebuttal testimony, Utility does not need to know the name of Swing  
15 First's groundskeeper (DR 2.40)

16 More generally, Utility cannot legitimately claim that it requires any of the information  
17 contained in the outstanding data requests to prepare its rebuttal testimony.

18 RESPECTFULLY SUBMITTED on February 25, 2009.

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31  


Craig A. Marks  
Craig A. Marks, PLC  
10645 N. Tatum Blvd.  
Suite 200-676  
Phoenix, AZ 85028  
[Craig.Marks@azbar.org](mailto:Craig.Marks@azbar.org)  
Attorney for Swing First Golf LLC

1 **Original** and 13 copies **filed**  
2 on February 25, 2009, with

3  
4 Docket Control  
5 Arizona Corporation Commission  
6 1200 West Washington  
7 Phoenix, Arizona 85007

8  
9 **Copy** of the foregoing **delivered**  
10 on February 25, 2009, to:

11  
12 Teena Wolfe, Administrative Law Judge  
13 Hearing Division  
14 Arizona Corporation Commission  
15 1200 West Washington  
16 Phoenix, Arizona 85007

17  
18 **Copy** of the foregoing **mailed and e-mailed**  
19 on February 25, 2009, to:


20  
21 Ernest G. Johnson, Director  
22 Utilities Division  
23 Arizona Corporation Commission  
24 1200 West Washington Street  
25 Phoenix, AZ 85007

26  
27 Ayesha Vohra/Robin Mitchell  
28 Legal Division  
29 Arizona Corporation Commission  
30 1200 West Washington Street  
31 Phoenix, AZ 85007

32  
33 Jeffrey W. Crockett/Bradley S. Carroll/Kristoffer P. Kiefer  
34 Snell & Wilmer LLP  
35 One Arizona Center  
36 400 East Van Buren Street  
37 Phoenix, AZ 85004-2202

38  
39 James E. Mannato  
40 Florence Town Attorney  
41 775 N. Main Street  
42 P.O. Box 2670  
43 Florence, AZ 85232

44  
45  
46 By:

  
47 Craig A. Marks